

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 645

Introduced by Assembly Member Feuer

February 21, 2007

An act to amend *Section 1203.4 of the Penal Code, and to amend Sections 41501 and 42005 of the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 645, as amended, Feuer. Vehicles: traffic violations: adjudication.

(1) Existing law authorizes a court to order a person issued a notice to appear for a traffic violation to attend a traffic violator school licensed under certain provisions of the Vehicle Code, in lieu of adjudicating the traffic offense, and with the consent of the defendant, or after conviction of a traffic offense. A court may order a continuance against a person who receives a notice to appear in court for a violation of a statute relating to the safe operation of a vehicle, in consideration for attendance at a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction. After that attendance, the court may dismiss the complaint.

This bill would make these provisions inapplicable to a person when the traffic offense is a ~~hit-and-run~~ *hit-and-run* violation, a *reckless driving violation*, or a driving-under-the-influence violation.

Because this bill would impose increased duties on local criminal justice systems, the bill would create a state-mandated local program.

(2) *Existing law provides a procedure for eligible persons to have a conviction dismissed, and to be released from all penalties and disabilities resulting from the offense of which they were convicted, subject to certain exceptions.*

This bill would provide that the above-described procedure does not apply to a person convicted of hit-and-run violations, reckless driving violations, and driving-under-the-influence violations. However, if a person convicted of one of those offenses petitions the court, the court in its discretion and in the interest of justice would be authorized to apply the above-described existing procedure to that person.

(2)

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.4 of the Penal Code is amended to
2 read:
3 1203.4. (a) In any case in which a defendant has fulfilled the
4 conditions of probation for the entire period of probation, or has
5 been discharged prior to the termination of the period of probation,
6 or in any other case in which a court, in its discretion and the
7 interests of justice, determines that a defendant should be granted
8 the relief available under this section, the defendant shall, at any
9 time after the termination of the period of probation, if he or she
10 is not then serving a sentence for any offense, on probation for
11 any offense, or charged with the commission of any offense, be
12 permitted by the court to withdraw his or her plea of guilty or plea
13 of nolo contendere and enter a plea of not guilty; or, if he or she
14 has been convicted after a plea of not guilty, the court shall set
15 aside the verdict of guilty; and, in either case, the court shall
16 thereupon dismiss the accusations or information against the
17 defendant and except as noted below, he or she shall thereafter be
18 released from all penalties and disabilities resulting from the
19 offense of which he or she has been convicted, except as provided
20 in Section 13555 of the Vehicle Code. The probationer shall be
21 informed, in his or her probation papers, of this right and privilege
22 and his or her right, if any, to petition for a certificate of
23 rehabilitation and pardon. The probationer may make the

1 application and change of plea in person or by attorney, or by the
2 probation officer authorized in writing. However, in any subsequent
3 prosecution of the defendant for any other offense, the prior
4 conviction may be pleaded and proved and shall have the same
5 effect as if probation had not been granted or the accusation or
6 information dismissed. The order shall state, and the probationer
7 shall be informed, that the order does not relieve him or her of the
8 obligation to disclose the conviction in response to any direct
9 question contained in any questionnaire or application for public
10 office, for licensure by any state or local agency, or for contracting
11 with the California State Lottery.

12 Dismissal of an accusation or information pursuant to this section
13 does not permit a person to own, possess, or have in his or her
14 custody or control any firearm or prevent his or her conviction
15 under Section 12021.

16 This subdivision shall apply to all applications for relief under
17 this section which are filed on or after November 23, 1970.

18 (b) Subdivision (a) of this section does not apply to any
19 misdemeanor that is within the provisions of subdivision (b) of
20 Section 42001 of the Vehicle Code, to any violation of subdivision
21 (c) of Section 286, Section 288, subdivision (c) of Section 288a,
22 Section 288.5, or subdivision (j) of Section 289, any felony
23 conviction pursuant to subdivision (d) of Section 261.5, or to any
24 infraction.

25 (c) (1) *Except as provided in paragraph (2), subdivision (a)*
26 *does not apply to a violation of Section 20001, 20002, 23103,*
27 *23104, 23105, 23140, 23152, or of Section 23103, as specified in*
28 *Section 23103.5, of the Vehicle Code.*

29 (2) *If a defendant who was convicted of a violation listed in*
30 *paragraph (1) petitions the court, the court in its discretion and*
31 *in the interest of justice, may apply subdivision (a) to that*
32 *defendant.*

33 (e)

34 (d) A person who petitions for a change of plea or setting aside
35 of a verdict under this section may be required to reimburse the
36 court for the actual cost of services rendered, whether or not the
37 petition is granted and the records are sealed or expunged, at a rate
38 to be determined by the court not to exceed one hundred twenty
39 dollars (\$120), and to reimburse the county for the actual cost of
40 services rendered, whether or not the petition is granted and the

1 records are sealed or expunged, at a rate to be determined by the
2 county board of supervisors not to exceed one hundred twenty
3 dollars (\$120), and to reimburse any city for the actual cost of
4 services rendered, whether or not the petition is granted and the
5 records are sealed or expunged, at a rate to be determined by the
6 city council not to exceed one hundred twenty dollars (\$120).
7 Ability to make this reimbursement shall be determined by the
8 court using the standards set forth in paragraph (2) of subdivision
9 (g) of Section 987.8 and shall not be a prerequisite to a person's
10 eligibility under this section. The court may order reimbursement
11 in any case in which the petitioner appears to have the ability to
12 pay, without undue hardship, all or any portion of the cost for
13 services established pursuant to this subdivision.

14 ~~(d) No relief~~

15 *(e) Relief* shall *not* be granted under this section unless the
16 prosecuting attorney has been given 15 days' notice of the petition
17 for relief. The probation officer shall notify the prosecuting attorney
18 when a petition is filed, pursuant to this section.

19 It shall be presumed that the prosecuting attorney has received
20 notice if proof of service is filed with the court.

21 ~~(e)~~

22 *(f)* If, after receiving notice pursuant to subdivision ~~(d)~~ *(e)*, the
23 prosecuting attorney fails to appear and object to a petition for
24 dismissal, the prosecuting attorney may not move to set aside or
25 otherwise appeal the grant of that petition.

26 ~~(f)~~

27 *(g)* Notwithstanding the above provisions or any other provision
28 of law, the Governor shall have the right to pardon a person
29 convicted of a violation of subdivision (c) of Section 286, Section
30 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
31 (j) of Section 289, if there are extraordinary circumstances.

32 **SECTION 1.**

33 *SEC. 2.* Section 41501 of the Vehicle Code is amended to read:

34 41501. (a) The court may order a continuance of a proceeding
35 against a person, who receives a notice to appear in court for a
36 violation of a statute relating to the safe operation of a vehicle, in
37 consideration for attendance at a licensed school for traffic
38 violators, a licensed driving school, or any other court-approved
39 program of driving instruction, and, after that attendance and

1 pursuant to Section 1803.5 or 42005, the court may dismiss the
2 complaint under the following conditions:

3 (1) If the offense is alleged to have been committed within 12
4 months of another offense that was dismissed under this section,
5 the court may order the continuance and, after the attendance,
6 dismiss the complaint. The court may order attendance at a licensed
7 school for traffic violators that offers a program of at least 12 hours
8 of instruction.

9 (2) If the offense is not alleged to have occurred within 18
10 months of another offense that was dismissed under this section,
11 the court may order the continuance and, after the attendance,
12 dismiss the complaint if the attendance is at any of the types of
13 schools or programs that the court directed pursuant to Section
14 42005 at the time of ordering the continuance.

15 (b) Subdivision (a) does not apply to a person who receives a
16 notice to appear ~~or is otherwise charged with~~ *as to, or is otherwise*
17 *charged with*, a violation of Section 20001, 20002, 23103, 23104,
18 23105, 23140, 23152, or 23153, or of Section 23103, as specified
19 in Section 23103.5.

20 ~~SEC. 2.~~

21 *SEC. 3.* Section 42005 of the Vehicle Code is amended to read:

22 42005. (a) The court may order or permit a person convicted
23 of a traffic violation to attend a traffic violator school licensed
24 pursuant to Chapter 1.5 (commencing with Section 11200) of
25 Division 5.

26 (b) In lieu of adjudicating a traffic offense committed by a
27 person who holds a noncommercial class C, class M1, or class M2
28 driver's license, and with the consent of the defendant, the court
29 may order the person to attend a licensed traffic violator school,
30 a licensed driving school, or any other court-approved program or
31 driving instruction.

32 (c) Pursuant to Title 49 of the Code of Federal Regulations, the
33 court may not order or permit a person who holds a class A, class
34 B, or commercial class C driver's license to complete a licensed
35 traffic violator school, a licensed driving school, or any other
36 court-approved program of driving instruction in lieu of
37 adjudicating any traffic offense committed by the holder of a class
38 A, class B, or commercial class C driver's license.

39 (d) The court may not order or permit a person, regardless of
40 the driver's license class, to complete a licensed traffic violator

1 school, a licensed driving school, or any other court-approved
2 program of driving instruction in lieu of adjudicating an offense
3 if that offense is either of the following:

4 (1) Occurred in a commercial motor vehicle, as defined in
5 subdivision (b) of Section 15210.

6 (2) Is a violation of Section 20001, 20002, 23103, 23104, 23105,
7 23140, 23152, or 23153, or of Section 23103, as specified in
8 Section 23103.5.

9 (e) Except as otherwise provided in subdivision (f), a person so
10 ordered may choose the traffic violator school the person will
11 attend. The court shall make available to each person subject to
12 that order the current list of traffic violator schools published by
13 the department pursuant to Section 11205.

14 (f) In those counties where, prior to January 1, 1985, one or
15 more individual courts, or the county acting on behalf of one or
16 more individual courts, contracted for the provision of traffic safety
17 instructional services to traffic violators referred by the court
18 pursuant to a pretrial diversion program, the courts may restrict
19 referrals under this section to those schools for traffic violators or
20 licensed driving schools that are under contract with the court or
21 with the county to provide traffic safety instructional services for
22 persons referred pursuant to subdivision (a).

23 (g) A county described in Section 28023 of the Government
24 Code may continue to provide the program authorized by this
25 section in accordance with the provisions of current and future
26 contracts as may be amended and approved by the individual courts
27 within that county and the county shall be exempt from state
28 regulations relative to maximum classroom attendance.

29 (h) Notwithstanding subdivisions (f) and (g), a court in the
30 counties described in those subdivisions shall comply with the
31 prohibitions set forth in subdivisions (c) and (d).

32 (i) A person who willfully fails to comply with a court order to
33 attend traffic violator school is guilty of a misdemeanor.

34 ~~SEC. 3.~~

35 *SEC. 4.* No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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